Calendar No. 158

100TH CONGRESS
1st Session

SENATE

REPORT
100-65

FOR THE RELIEF OF THE CITY OF DICKINSON, NORTH DAKOTA

JUNE 8, 1987.—Ordered to be printed

Filed, under authority of the order of the Senate of June 5, 1987

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 640]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 640), for the relief of the City of Dickinson, North Dakota, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

As ordered reported, S. 640 would forgive the city of Dickinson, North Dakota the repayment to the Federal Government of approximately $1.6 million expended by the Bureau of Reclamation for the construction of new gates at the existing Dickinson Dam in North Dakota.

BACKGROUND

Dickinson Dam is located in southwestern North Dakota and, among other project purposes, provides a source of municipal and industrial water for the city of Dickinson (population 16,000). The Dam was originally authorized by the Flood Control Acts of 1944 and 1946, and construction was completed in 1950.

S313-11

The need for safety modifications and additional storage capacity led to the passage in 1976 of Public Law 94-228 which, among other purposes, authorized the Secretary of the Interior to construct a new spillway for safety purposes and to install a Bascule gate at the existing spillway of the Dam in order to increase storage capacity. The new gates raised the controlled water surface by approximately 3½ feet and increased useful storage capacity by 3,493 acre-feet to an active storage capacity of approximately 9,100 acre-feet. The Act required the city of Dickinson to repay an estimated $681,000 (January 1974 price levels) allocated to providing additional municipal and industrial water supplies.

Due to inflation, design modifications, and an extended construction period, the final cost allocated to water supply and repayment by the city escalated to $3.22 million. The city of Dickinson objected to repayment of the amount contending that most of the cost increases were due to inadequate design which resulted in delay and modifications to the project. In addition, the city also objects to repayment of the full amount based on the poor performance record of the Bascule gate and, therefore, the questionable reliability of the additional water supply.

The city sought relief in the courts and on February 1, 1985, filed suit against the Department of the Interior for breach of contract and requested that the contract with the Department for repayment be declared null and void. The suit was subsequently dismissed for lack of jurisdiction.

LEGISLATIVE HISTORY

S. 640 was introduced by Senator Burdick on March 3, 1987, and was cosponsored by Senator Conrad.

During the 99th Congress, a similar bill, S. 230, was introduced by Senator Burdick, and a hearing was held before the Subcommittee on Water and Power on July 22, 1986 (S. Hrg. 99-981). At that time the Administration opposed passage of S. 230.

S. 230 was ordered favorably reported out of Committee with an amendment in the nature of a substitute (S. Rept. 99-495) on September 27, 1986. No further action was taken prior to sine die adjournment of the Congress.

The text of S. 640 is identical to the text of S. 230, as reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on June 3, 1987, by a vote of a quorum present, recommended that the Senate pass S. 640, as reported.

The rollcall vote on reporting the measure was 19 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. JOHNSTON	
Mr. BUMPERS	
Mr. FORD	
Mr. METZENBAUM	
Mr. MELCHER	
Mr. BRADLEY	
Mr. BINGAMAN	
Mr. WIRTH	
Mr. FOWLER	
Mr. CONRAD	
Mr. McCLURE*	
Mr. HATFIELD	
Mr. WEICKER*	
Mr. DOMENICI	
Mr. WALLOP	
Mr. MURKOWSKI*	
Mr. NICKLES*	
Mr. HECHT	
Mr. EVANS	

*Indicates vote by proxy.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 5, 1987.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 640, a bill for the relief of the City of Dickinson, North Dakota, as ordered reported by the Senate Committee on Energy and Natural Resources, June 3, 1987. We estimate that enactment of this bill will result in a loss of receipts to the federal government totaling approximately $120,000 annually over the 40-year period beginning in 1989.

S. 640 would relieve the city of Dickinson of repayment of approximately $1.6 million of the amount already expended by the Bureau of Reclamation for the construction of new gates at the existing Dickinson Dam in North Dakota. The city would still be responsible for repayment of all annual operation, maintenance and replacement costs of the project facilities.

CBO estimates that, relative to current law, repayment of $1.6 million rather than the full $3.2 million by the city of Dickinson will result in a loss of receipts to the federal government of approximately $120,000 annually beginning in 1989. This estimate assumes that the city would have repaid the full capital costs of the project in the absence of this bill. It is also assumed that the city would repay its debt in level annual payments over 40 years beginning in 1989, both under S. 640 and under current law.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM,
(for Edward M. Gramlich Acting Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 640.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected as a result of the enactment and implementation of S. 640. Therefore, there would be no impact on personal privacy.

Other than the paperwork associated with the preparation of a new repayment contract as authorized by the bill, little, if any, additional paperwork would result from enactment of S. 640.

EXECUTIVE COMMUNICATIONS

The Committee has not requested legislative reports on S. 640. A copy of the Administration's views on S. 230 of the 99th Congress follows:

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 18 1986

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
SEP 18 1986
WASHINGTON D.C. 20510

Honorable James A. McClure
Chairman, Committee on
Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for our views on an amendment in the nature of a substitute to be offered by Mr. Burdick to S. 230, a bill "For the relief of the city of Dickinson, North Dakota."

As we understand the proposed substitute: (1) the city of Dickinson would be forgiven from any obligation to repay prior costs associated with the Dickinson Dam modification (such costs amounted to approximately $3.5 million as of January, 1985); (2) the United States would be required to enter into a new repayment contract with the city by which the latter would repay $1.54 million of the original costs of the Dickinson Dam modification; and (3) the city would be required to pay all costs associated with the operation and maintenance of project facilities.

We oppose enactment of the substitute for the same general reasons that we oppose enactment of S. 230, as introduced. It would be improper to relieve the city from all or any portion of the repayment obligation for a facility which has provided, and will continue to provide, the benefits the city had originally sought.

The Reclamation Authorization Act of 1975 (Public Law 94-228; 90 Stat. 205) authorized (through Title II) the modification of the Dickinson Dam to increase the conservation storage of Edward Arthur Patterson Lake by installing gates on the existing spillway. Public Law 94-228 also provided for construction of an auxiliary spillway for dam safety purposes.

The city of Dickinson entered into a contract with the United States in July of 1979 for repayment of the reimbursable costs of the Dickinson Dam modification. The contract estimated the cost to the city at $1.54 million. On March 3, 1980, the Bureau of Reclamation (Bureau) sent a letter to the city in which the bid costs of the modification were outlined, and the total costs were then calculated to be $2,279,145. Article 3b of the 1979 repayment contract provides that the city had 30 days to accept or reject the bid price for the cost of the modification. The city subsequently sent a letter to the Bureau Regional Director in Billings, Montana, on April 10, 1980, accepting the bid construction price of the Bascule gate modification and encouraged the Regional Director to proceed as quickly as possible with the construction.

In September of 1980, the city sent a letter to the Regional Director asking that construction on the Bascule gate be suspended until the city had sufficient time to reassess the proposed modification. The city retained a consulting engineer to review the Bureau plan, and on his recommendation sought to have the plan revised to a raised concrete extension of the existing spillway. In an October 1, 1980, letter to the city, the Regional Director outlined the reasons for the decision to pursue the Bascule gate modification as opposed to the addition of an extension to the dam. The reasons for staying with the Bascule gate plan were based on:

- o A need to maintain a capability to evacuate the reservoir area during flood control operations; and

- o The recognition that a permanent height extension to the spillway would incur much greater costs than the Bascule gate plan.

On January 6, 1981, the city sent a letter asking the Regional Director to proceed with the construction of the Bascule gate modification as expeditiously as possible.

The Bascule gate was essentially completed in February of 1982, and preliminary testing was begun. In that same month, warm weather caused rapid melting of the winter snow and ice, thereby resulting in a rapid increase in the reservoir level. During automatic operation of the gates, a large piece of ice, approximately 9,000 square feet in size, broke free in the reservoir, and jammed against the gates causing damage to the hydraulic lines and causing the gates to fully open. The surge of water into the river channel caused minor flooding in the city of Dickinson. Subsequent field tests of the gate indicated that the hydraulic system was not adequate against a full reservoir, nor was the aeration system adequate to prevent ice buildup. In addition to necessary design changes, the Bureau concluded that other additions to the structure were necessary: (1) installation of an ice boom to prevent large masses of ice from passing over the gate; (2) installation of a gate de-icing system; and (3) installation of an alarm and monitoring system.

On December 19, 1983, the city sent to the Regional Director a resolution stating that the city had determined that the United States, through the Bureau, had breached its contract with the city, and that the city rejected its contract with the United States for repayment of the costs associated with the Bascule gate modification. In response, the Regional Director stated that the Bureau had kept the city informed concerning the efficacy and costs associated with the gate construction; and therefore, pursuant to their repayment contract, the city was obligated to repay the costs of the Bascule gate modification in full. On January 3, 1985, the Regional Director sent a letter to the city of Dickinson advising that the Bascule gate modification was considered complete and operational. The city was also advised that the final cost of the construction was calculated to be $3.15 million.

Our opposition to the proposed amendment as well as to S. 230, as introduced, rests on the following points:

1. Section 201 of Public Law 94-228, which states in pertinent part:

> The Secretary is authorized to modify the spillway of Dickinson Dam on the Heart River in the State of North Dakota, to increase conservation storage by installing gates on the existing spillway.

2. The Bureau has determined that the Bascule gate option for providing the 900 acre-feet of additional municipal and industrial water for the city of Dickinson is the most operationally and financially prudent approach.

3. Under the applicable repayment contract between the city of Dickinson and the Bureau:

   a. Article 3b provides that the city had the option to accept or reject the construction, and its associated costs, of the Bascule gate modification. The city accepted the Bascule gate option, at a cost of $2.28 million ($2.28 million was the estimated cost in the March 3, 1980, Bureau letter to the city), by its letter of January 6, 1981.

   b. Article 4 provides that the city is obligated to repay all the costs associated with the construction which provides increased conservation storage to Edward Arthur Patterson Lake.

4. The facilities and benefits anticipated by the city have been constructed and provided by the Bascule gate, and the city has the use of those benefits.

We regret any conflict between the city of Dickinson and the Bureau in this matter. We recognize that the city has incurred an increase to its repayment obligation due to the additional construction necessary on the facilities and the added interest during construction from the various delays. It is our view that the final engineering configuration of the Bascule gate is the appropriate design to cope with the climatological environment in the area. We believe that the cost incurred as the result of the gate construction is realistic in the engineering context presented. Further, the Bascule gate is performing as anticipated and providing the water the city expected. Therefore, pursuant to its contract, the city is obligated to reimburse the United States for the benefits provided.

Because S. 230, as introduced, as well as the proposed substitute, would provide relief in excess of $1 million to the city of Dickinson, we are concerned that action of the Congress to grant such relief would establish an unfavorable precedent. That precedent could lead to unwarranted demands for relief from payment for costs of engineering changes for all Bureau projects, especially those involving up-front cost-sharing.

In conclusion, we oppose enactment of S. 230, both as introduced and as proposed to be amended. Our opposition is based upon clear evidence which documents the Bureau's continued good-faith efforts over the course of construction to provide the city of Dickinson with the opportunity to accept or reject construction of the Bascule gate. Therefore, we do not see the prudence of relieving the city of the repayment obligation which has provided, and will continue to provide, the benefits the city sought.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Joseph P. Findaro, Jr.

ASSISTANT SECRETARY Joseph P. Findaro, Jr.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law would be made by the bill, S. 640, as reported.

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